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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

DAVID H. RYAN,
Appellant,
vs.
THE STATE OF WASHINGTON, *et al.*,
Appellees.
No. [redacted] 8

BRIEF OF AMICUS CURIAE

E. P. DONNELLY,
Counsel for Appellees.
E. W. SCHWELLENBACH,
Of Counsel.

Post Office Address:
Ephrata, Washington.

IN THE

SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1936

DAVID H. RYAN,	)	
Appellant,	)	
vs.	)	No. 774
THE STATE OF WASHINGTON, *et al.,*	)	
Appellees.	)	

MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN ARGUMENT AS AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AND TO PARTICIPATE IN ARGUMENT AS AMICUS CURIAE

Comes now E. W. Schwellenbach, Prosecuting Attorney of Grant County, State of Washington, and moves the Court that leave be granted to the said E. W. Schwellenbach to file a brief as amicus curiae in the above entitled cause and that leave be granted to him to participate as amicus curiae in an oral argument of said cause before the bar of this Court during a por-

tion of the time allotted to counsel to appellees for oral argument.

This motion is based upon the records and files in said cause and upon the hereunto attached affidavit of E. W. Schwellenbach.

E. P. DONNELLY,
Counsel for Appellees.
E. W. SCHWELLENBACH,
Of Counsel.

IN THE

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OCTOBER TERM, 1936

DAVID H. RYAN, *Appellant,*
vs.
THE STATE OF WASHINGTON, *et al.*, *Appellees.*
No. 774

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF, ETC.

State of Washington)
) ss.
County of Grant)

E. W. SCHWELLENBACH, being first duly sworn upon his oath, deposes and says: That affiant

is the duly elected, qualified and acting Prosecuting Attorney of Grant County, State of Washington; that affiant is preparing and has prepared a brief in this cause; that the taxing officials of said Grant County, Washington, levied general ad valorem taxes against the machinery, tools and personal property of David H. Ryan, appellant herein, for the taxing years of 1934, 1935 and 1936 in the total amount of $2,865.78; that in cause No. 4692, records and files of said Grant County, Washington, said David H. Ryan sought to enjoin said officials from collecting said taxes on the grounds that the State of Washington by Section 8108 of Remington's Compiled Statutes had ceded to the United States Government exclusive jurisdiction over the property upon which said David H. Ryan had performed his contract; that it was stipulated between said David H. Ryan and said taxing officials of said Grant County that the decision in said cause No. 4692 be rendered in accordance with the final determination of the cases entitled "David H. Ryan vs. State of Washington" and "David H. Ryan vs. Tax Commission, et al."

That affiant assisted the Attorney General in the trial of said case before the Superior Court of Thurston County, Washington, and appeared amicus curiae before the Supreme Court of the State of Washington upon the appeal of said cases.

That Silas Mason Company, Incorporated, have paid their ad valorem taxes in the amount of $25,911.00 to Grant County, Washington, under protest and will seek a return of said money so paid and will refuse to pay any taxes in the future, in the event that it should be determined by this Court that the State of

Washington has no jurisdiction over the area involved; that said Grant County, Washington, is therefore vitally interested in the outcome of this case.

E. W. SCHWELLENBACH

Subscribed and sworn to before me this 16th day of April, 1937.

BERNICE STROUF,
Deputy County Clerk-Auditor.

(*Seal*)

IN THE

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E. P. DONNELLY,
Counsel for Appellees.
E. W. SCHWELLENBACH,
Of Counsel.

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Ephrata, Washington.

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STATEMENT

It is my purpose to discuss only the question of federal jurisdiction. These two cases and the case of Silas Mason Company, Incorporated, vs. Tax Commission were all tried in the Superior Court at the same time, and, by stipulation of the parties, all of the evidence, insofar as it was material, was considered as applying to all three cases. The Supreme Court of the State of Washington found from the record and the exhibits introduced, the facts hereinafter set forth.

In passing, may I call attention to that portion of appellant's brief which reads as follows:

> "Counsel have stipulated that all of the lands upon which these contracts were performed by appellant were acquired by the United States, prior to the commencement of the work, by purchase with the consent of the State of Washington for the purpose of construction of a dam, with necessary appurtenances, across the Columbia River;"

At no place in the record was it stipulated that these lands were acquired with the consent of the State of Washington.

In 1933, the state legislature of the State of Washington created the Columbia Basin Commission, consisting of five members, and authorized them to enter into contracts and to employ any and all means necessary to secure the immediate development of the Columbia Basin project, which is a project to reclaim approximately 1,200,000 acres of arid land in Eastern Washington. This was to be done by the construction of a dam at the head of the Grand Coulee, which dam was to have a two-fold purpose, the furnishing of power and the furnishing of water for these arid lands. The commission secured an allocation of $377,000.00 from the sale of emergency relief bonds by the state for the purpose of commencing work on this project.

On June 30, 1933, the commission, in pursuance of its plan, entered into a contract with the United States, represented by the Bureau of Reclamation, Department of the Interior, wherein the United States agreed to make the topographic surveys and explorative work and to prepare the designs and specifications for the construction work on the dam, for which the

Columbia Basin Commission agreed to pay an initial sum of $50,000.00 at the execution of the contract and the balance of the allocation of $377,000.00 as the work progressed. The state has furnished practically all of this sum of $377,000.00.

On November 1, 1933, the United States, represented by the Secretary of the Interior, and pursuant to the reclamation laws and the National Industrial Recovery Act, and the State of Washington, acting through the Columbia Basin Commission, entered into a contract relating to the construction of the dam, power plant and power transmission lines at the Grand Coulee site on the Columbia River in which the United States agreed to expend the sum of $63,000,000.00 or so much as was necessary in the construction of said dam. (R. 26)

This agreement, among other things, contained the following:

Paragraph 9 recited that the increased amount of firm power made possible in the lower dams by reason of the storage behind the Grand Coulee dam was an important factor in making the lower dams self-liquidating. Paragraph 10 referred to the fact that the Columbia Basin Commission had been created by the state legislature for the purpose of cooperating with the federal government in securing the construction of the project and of the Grand Coulee dam.

Article 12 provides:

> "*Title to Constructed Works.* The United States will retain the title to the said dam and power plant and the operation and control thereof until the cost of the said project, including the cost of the said first unit dam and power plant, has

been fully repaid into the treasury of the United States."

Article 13 reads as follows:

> "13. *Commission to Act in Advisory Capacity.* The Commission will act as an advisory board representing the state in an advisory capacity in conferences with the officers of the United States concerning the various important questions which may arise from time to time in connection with the construction and use of the said dam, power plant and transmission lines."

Article 14 provides that the state shall have an option, for a period of three and one-half years, to purchase the perpetual right to the entire power output of the first unit dam and power plant. Article 16 provides that the United States reserves the right to enlarge, alter and improve the dam and power plant, to change the machinery therein and to add other or additional power plants or power units.

It would seem that if the federal government, by acquisition of the land herein involved, acquired exclusive jurisdiction, it would not be necessary for it to make any reservations in any contract which it made with the State of Washington. From the foregoing it can plainly be seen that this is a joint project between the United States and the State of Washington.

On November 29, 1933, appellant entered into a contract with the United States for the excavation of overburden at Columbia River Damsite, Columbia Basin Project, Washington, for the sum of $534,500.00. The specifications, attached to and made a part of the contract, provided, among other things, that the ap-

pellant should obtain all required licenses and permits, should give preference, after ex-service men, to citizens who are residents of *the county and state in which the work was to be performed*, should furnish compensation insurance in compliance with the laws of the *state wherein the work was to be done*, and should comply with all applicable provisions of federal, state and municipal safety laws and building and construction codes.

Appellant entered upon the execution of the work under the contract about January 1, 1934, and completed it in the summer of the same year. On July 18, 1934, he entered into a second contract with the United States which was for the construction of a railroad at Grand Coulee dam, for the sum of $235,570.00. The railroad was to be 34.5 track miles in length, extending from the Northern Pacific railroad track at Odair, Washington, to the damsite. The specifications in this contract contained the same provisions as in the contract for the excavation.

On July 16, 1934, which was two days before the execution of appellant's second contract, the United States entered into a contract with the Silas Mason Company, Incorporated, for construction work on the Grand Coulee dam and power plant, Columbia Basin Project, Washington, for the sum of $29,339,301.50.

The specifications attached to the Silas Mason Company, Incorporated contract provided, among other things, and in addition to what has already been mentioned, that the contractor should make all necessary arrangements with the proper *state and county authorities* for school facilities; and that police protection for the contractor's camp and the area involved in and

surrounding the construction work would be furnished by the Washington State Patrol in cooperation with the federal government, but that the contractor should provide, at its camp site, such jail facilities as were satisfactory to the Washington State Patrol.

The original plan was to construct the dam as a power project. After the Silas Mason Company had commenced to perform their contract, however, the specifications were changed to lower and widen the dam so that it is a base for the ultimate higher dam to be used for the irrigation of all of the Big Bend section and involving a great many acres. (R. 17, 18 and 19)

The area included in the entire project is very extensive, covering many acres of land on both sides of the Columbia River. A large lake for reserve purposes will be made to the north, and, in that process, a great many thousand acres of land will be necessary for the ultimate project. In the ultimate project there will be public land, privately owned land, some state and county lands, some school lands and also tribal lands. The land is being acquired by the federal government as and when it is needed. (R. 18 and 20)

There are two school districts in the area involved, one in the government Engineer's Town and one in the contractor's camp at Mason City, both of which have been regularly formed under the laws of the State of Washington. (R.20 and 21)

The policemen in Mason City employed by the Silas Mason Company have been deputized as deputy sheriffs of Okanogan County. The attorney for the Silas Mason Company located at the contractor's camp in Mason City has been appointed justice of the peace in Okanogan County. Prior to the enactment of the

Washington State Liquor Law, a number of beer parlors were being operated on this land acquired by the federal government, under permits issued by the county commissioners of Grant County. At various times the sheriff of Grant County was called to this territory to investigate law violations and to arrest law violators. At various times the coroner of Grant County was called to investigate the deaths of men who were killed while performing labor in the construction of the work, on this land acquired by the government. (R. 21)

The state has established a Health Office in that territory and has also maintained the State Police over this area. Neither the state, nor any of its subdivisions have at any time recognized the exclusive jurisdiction of the federal government over any of this area. The federal government has not at any time attempted to exercise exclusive jurisdiction over any of this territory. On the contrary, in all of its dealings, it has recognized the jurisdiction of the state and of its various subdivisions over this entire area. As a matter of fact, the only people who have ever claimed that this area is under the exclusive jurisdiction of the federal government are some contractors who wish to evade the payment of their taxes.

ARGUMENT

Appellant contends that he is exempt from taxation because he operated on territory which he claims was purchased by the federal government and that the state legislature, by the enactment of Section 8108, Remington's Revised Statutes, in 1891, ceded exclusive jurisdiction to the federal government, thereby making this particular area an independent sovereignty

over which the State of Washington has no jurisdiction. In other words, he contends that the foregoing factors resulted in the carving out from the State of Washington of an entirely new sovereignty which we might call the District of Grand Coulee and which is entirely surrounded by the State of Washington but over which the State of Washington has no jurisdiction.

The reason for the enactment of this provision in the federal constitution is very well explained by Ordronaux in his work on "Constitutional Legislation." This is found on Page 764 of State ex rel Jones vs. Mack, 47 Pac. 763, as follows:

> "The functions of the general government demanding the establishment of forts, magazines and dockyards and the erection of post offices, courthouses, mints and other buildings, in various parts of the United States, the framers of the constitution made provisions accordingly for acquiring the necessary sites. It was contemplated that such places should be purchased either from states or individuals, and, as it was necessary, for their better government, that congress should have exclusive legislation over them, the clause requiring the legislature of the state making the cession was introduced, in order to avoid conflicts of jurisdiction."

The reason is further explained in Fort Leavenworth Railroad Company vs. Lowe, 114 U. S. 264, 266 as follows:

> "Upon the second part of the clause in question, giving power to "exercise like authority," that is, of exclusive legislation "over all places

purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings," the Federalist observes that the necessity of this authority is not less evident. "The public money expended on such places," it adds, "and the public property deposited in them, require that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated by requiring the concurrence of the States concerned in every such establishment." "The power," says Mr. Justice Story, repeating the substance of Mr. Madison's language, "is wholly unexceptionable, since it can only be exercised at the will of the State, and therefore it is placed beyond all reasonable scruple."

It can readily be seen that the sole purpose of this constitutional provision was to prevent a duplication or conflict of authority which might interfere with the federal government in its protection of the safety and welfare of its people. There is no conflict of authority in the construction of the Grand Coulee dam. It is being built by private contractors with federal money under the supervision of the Department of Interior with the cooperation of the State of Washington. The federal government and the State of Washington are both exercising concurrent jurisdiction with absolutely no conflict between either.

The leading case on this question is Fort Leaven-

worth Railroad Company vs. Lowe, supra. It held, at Page 266, in referring to the constitutional provision:

> "The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the General Government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the States equally with the property of private individuals."

And again, at Page 269:

> "The essence of that provision is that the State shall freely cede the particular place to the United States for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortiously by disseisin of the State; much less can it be acquired by mere occupancy, with the implied or tacit consent of the State, when such occupancy is for the purpose of protection.
>
> "Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualfication: that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference

and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the General Government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits."

That case laid down the following rules respecting the jurisdiction of the federal government over lands acquired by it:

1. When land is acquired by the United States for one of the purposes within Article 1, Section 8, Clause 17 of the Federal Constitution, by purchase with the consent of the State, federal jurisdiction is exclusive over such area for all purposes.

2. When land is acquired for one of the purposes within that Clause, but other than by purchase with the consent of the State, then federal jurisdiction is exclusive only to the extent of the purpose for which the land is held.

3. When land is acquired for a purpose not within that Clause, but the State by an independent act expressly cedes jurisdiction to it, the United States has such jurisdiction as may be ceded to it by the particular act of cession.

4. When land is acquired for a purpose not within that Clause, and jurisdiction has not been ceded by an express act of the State, the United States holds the

land just an any other proprietor does, except that the land may not be taxed by the State.

Now let us consider under which one of these rules this particular land was acquired. It should be borne in mind that the constitutional provision is limited to lands acquired, only, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. The only possible provision under which this acquisition of property could come would be "other needful buildings." It can easily be seen that post offices, courthouses, mints, military hospitals, customs houses, penitentiaries, training schools, soldiers' homes and Indian schools would come under the definition of "needful buildings." These are all used for the strict purpose of carrying on the business of the national government and, if there were any conflict of jurisdiction over any of them, it might interfere with the free and untrammeled carrying out of the purposes of government.

The only case that we have been able to find where locks and dams were defined as needful buildings is that of United States vs. Tucker, 122 Fed. 518, decided in 1903. The question arose on a demurrer to an indictment charging the defendant with the crime of murder in

> "what is known as Lock Number Three, on Green river, and upon a certain tract of land upon which said lock was then and there and now is located, which land and which lock were then and there and now are the property of and owned by the United States, and upon which land and in and at which place thereon the United States then conducted and carried on and now conducts and car-

ries on a part of its public business, to-wit, the providing of locks and dams on said Green river for the safe and useful navigation thereof, and which land and lock had, before said 13th day of May, 1900, been duly purchased by and ceded to the United States with the consent of the Legislature of the state of Kentucky, and which were then and there and which are now under and within the exclusive jurisdiction of the United States, as well by the said purchase and the consent of the Legislature of the state of Kentucky which was given thereto as by an express act of said Legislature in that behalf and ceding said jurisdiction, to-wit, an act entitled 'An act to grant the consent of the state of Kentucky to the acquisition by the United States of certain lands within the commonwealth bordering on Green and Barren rivers for certain purposes,' and which act was approved February 20th, 1886 (1 Sess. Acts 1885-86, p. 11, c. 69), by the Governor of the said state." . . .

This matter coming up on a demurrer, all of the facts well pleaded were admitted, and the Court therefore had before it the uncontradicted facts that the United States purchased the place in question with the consent of the legislature; that the legislature had, in express terms, ceded to the United States jurisdiction over this particular place and that the United States conducted and carried on a part of its public business, to-wit: the providing of locks and dams on the Green river for the safe and useful navigation thereof. All of this, coupled with the fact that the federal government was making the claim of exclusive jurisdiction, no doubt influenced the Court in holding that this

place was a "needful building." Although we feel that the United States obtained exclusive jurisdiction by virtue of the special legislative act ceding exclusive jurisdiction to it over this particular place, still we have no particular criticism of the holding that this, under the admitted facts, was a "needful building." The act occurred on lock No. 3, a completed structure, then being operated by the United States for the safe and useful navigation of the Green river, which was a governmental function. The primary purpose of the construction and operation of these particular locks and dams was to aid navigation. In the case at bar, we have a contractor who is excavating for the construction of a dam, the main purpose of which will be to furnish power and provide water for the irrigation of arid land. The land in question was not acquired for one of the purposes within the constitutional provision and therefore neither Rule One nor Two can apply.

Nor was this land acquired by the United States for a purpose not within Clause 17, but where jurisdiction was ceded by an independent and special act of cession by the legislature. That rule is very well explained in United States vs. Tucker, supra, at Page 520, as follows:

> "Where there is a 'purchase' of property with the consent of the state legislature, exclusive jurisdiction follows and attaches by virtue of the constitutional provision itself, while in the case of express cession of jurisdiction to the United States by a legislative enactment for that purpose the jurisdiction of the United States over the place is derived from such legislative act, and not necessarily from the constitutional provision per se."

See also syllabus to In Re Kelley, 71 Fed. 545, as follows:

> "The purchase of lands in a state by the general government, with legislative consent, does not, ipso facto, confer upon the federal government exclusive jurisdiction, unless the purchase is for a fort or for some other purpose distinctly named in article 1, section 8, of the constitution; and in order that exclusive jurisdiction may be acquired over land taken for any other purpose, the act providing therefore and calling for the consent must unequivocally declare that exclusive jurisdiction is intended and necessary, or such necessity must be manifest from the purpose of the act."

There are two methods, therefore, by which exclusive jurisdiction can be acquired by the federal government; one by the purchase with the consent of the legislature for one of the purposes enumerated in the constitution, and the other by a special act of the legislature, ceding jurisdiction over the particular area involved. Jurisdiction attaches in the first by virtue of the constitutional provision itself, while in the second, jurisdiction is derived from the legislative act. No such special legislation ceding jurisdiction over the area involved was enacted in this case.

Appellant relies upon Section 8108, Remington's Compiled Statutes because it includes the following:

> ". . . for the sites of locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers and harbors of this state, or bordering thereon, . . ."

It should be borne in mind, however, that said act provides:

> "the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of congress in such cases made and provided."

Any consent given in compliance with the constitutional provisions could only be for one of the purposes enumerated. The state could not enlarge upon the powers granted to congress by the federal constitution by the enactment of any general statutes of cession to comply with the terms of the constitution. Furthermore, general statutes of cession are strictly construed.

Six Companies Inc., vs. DeVinney, 2 Fed. Supp. 693.

It can clearly be seen that the legislature in 1891 had no intention of ceding jurisdiction of this particular area for the construction of the Grand Coulee dam as a part of the Columbia Basin Project. If the federal government should want exclusive jurisdiction over this area, and it should be borne in mind that there has been absolutely no want, desire or intention on the part of the federal government to exercise such exclusive jurisdiction, but if such were wanted, then the legislature could, by a special act, make an express cession of jurisdiction over this particular area to the federal government, and it would then have exclusive jurisdiction, not because of the constitutional provision, but because of the special act of cession. Rule No. Three would therefore not apply.

It is true that an individual may raise this ques-

tion of jurisdiction and that it does not necessarily have to be raised by the federal government. However, it must be shown that the federal government, by some affirmative act, claims jurisdiction. The record in this case is absolutely void of any such attempt. On the contrary, every act which the federal government has done in connection with this project has been inconsistent with any claim of exclusive jurisdiction. In its contract with the State of Washington it recognized and protected the rights of the State throughout. In its contracts with the appellants herein for the construction of the dam it provided that preference should be given to citizens who are residents of the county and state in which the work was to be performed; that they should furnish compensation insurance in compliance with the laws of the state wherein the work was to be done and should comply with all applicable provisions of federal, state and municipal safety laws. The contract further provided that the contractors should make all necessary arrangements with the proper state and county authorities for school facilities, and that police protection for the contractor's camp and the area involved in and surrounding the contractor's work would be furnished by the Washington State Patrol in cooperation with the federal government. In addition to this the Bureau of Reclamation recognized the jurisdiction of the county superintendent of schools regarding the formation of a school district for the government townsite. From the foregoing it can be plainly seen that the federal government has never at any time claimed exclusive jurisdiction but has always recognized the jurisdiction of the state and its various subdivisions. As a matter of fact, until the commencement of this action, appellant

Silas Mason Company, Inc. apparently recognized the jurisdiction of the state in this area because its attorney, located at the contractor's camp, was appointed justice of the peace in Okanogan county and all of the policemen employed by it were appointed as deputy sheriffs of Okanogan County.

In Stockton vs. Baltimore & N. Y. R. Co., 32 Fed. 9, the State of New Jersey sought to enjoin the defendants from erecting a bridge upon the lands of the State situate on the shore on the ground that the federal government had not obtained title to the land by condemnation. It was claimed that the only constitutional method by which the federal government could obtain the possession and use of lands within a state was in conformity with the constitutional provision under consideration herein. Mr. Justice Bradley, a member of the United States Supreme Court, then sitting as a circuit judge, held on Page 18:

> "The argument, however, is directed to the acquisition of territory, with exclusive jurisdiction over the same, and is entirely sound in that regard. But it does not touch the question as to the power of the United States to acquire the mere use of land without exclusive jurisdiction therein. Nearly all the powers of government are exercised over territory in which the United States and the several states have concurrent jurisdiction. It is only in exceptional cases that the United States desires to have exclusive jurisdiction, and a consequent cession of territory. It is very true that the consent of the state legislature is required in order to give the United States this exclusive jurisdiction. But that is all. It is not required

when exclusive jurisdiction is not sought. On the contrary, the government, if it sees fit, may condemn land for its purpose without the consent of the state."

This is not one of those exceptional cases where the federal government desires to have exclusive jurisdiction. It has, and will continue to acquire this land by either purchase or condemnation. The land, and the dam which is being constructed upon it, are not such as would necessarily require absolute and exclusive jurisdiction in the United States government. No such exclusive jurisdiction has been asked for by the federal government and none has been given by the State of Washington. Furthermore, the constitution does not say that congress *shall exercise* exclusive legislation. It says that the congress shall have *power to exercise* exclusive legislation.

We must therefore come to the conclusion that the land acquired for this project would come within Rule Four as enumerated above. It was acquired by the United States for a purpose not within Clause 17 of the federal constitution and there has been no express cession of this particular area by any special act of the legislature. The government therefore holds the land just as any ordinary proprietor. It, the land, being the property of the federal government, may not be taxed by the State. This is because any property owned by the government is exempt from taxation. But when land is held by the government in its proprietary capacity only, it does not exercise exclusive jurisdiction over that land. That land is therefore under the jurisdiction of the state. It is the duty of the state to afford protection to the persons, property

and businesses residing within said area and the state therefore has a right to tax said persons, property and businesses.

This is further borne out by the fact that this dam is being constructed by the Reclamation Department rather than by the War Department. Appellant continually insists that the primary purpose of this project is the improvement of navigation. The record shows that its primary purpose is to furnish power and to furnish water for arid lands. The Columbia Basin Commission was organized by the State of Washington for the purpose of securing the development of the Columbia Basin Project, which is a project to reclaim approximately 1,200,000 acres of arid land. The Grand Coulee dam is being constructed for the purpose of furnishing power and furnishing of water for these arid lands. It should be remembered that after the Silas Mason Company had commenced work on their contract the specifications of the contract were changed to lower and widen the dam, thus constructing an enormous base which will sustain the high dam which it is contemplated will ultimately be erected and provide for the irrigation of this large area. The aid to navigation is merely incidental. The facts here are clearly distinguishable from the facts in State vs. Tucker, supra.

In Twin Falls Canal Company vs. Foote, 192 Fed. 583, proceeding under the authority of the Act of Congress of June 17, 1902, 32 Fed. Stat., 388, commonly known as the "Reclamation Act," the same act under which the Secretary of the Interior is proceeding in this instance, the Secretary of the Interior had caused to be constructed, and was maintaining a canal system

diverting water from the Snake River. The plaintiff, a corporation operating in that territory, sought an adjudication of its rights, and the Court held, at page 594:

> "The storage of water for irrigation purposes or the reclamation of arid lands is not, accurately speaking, a governmental function, and is not "a necessary part of civil government in the same sense in which the protection of life, liberty and property, the defense of the government against insurrection and foreign invasion, and the administration of public justice, are." The government, being possessed of large tracts of arid land, which without irrigation are practically worthless, in pursuance of a wise policy, as we think, is, under the reclamation act, engaged in reclaiming them, to the end that they may become marketable and ultimately fruitful.
>
> "(1) In prosecuting such an enterprise, however, it is not primarily performing a governmental, or, strictly speaking, even a public function, but is promoting its proprietary interests. Such advantage as arises therefrom to the people at large is material and not governmental, and is only such as might indirectly accrue to the public from the reclamation of an equal amount of land through private enterprise."

CONCLUSION

In the case at bar this land was not acquired by the United States for one of the purposes within Clause 17, Section 8, Article 1 of the federal constitution. No express cession of jurisdiction over this area was given to the federal government by the State of

Washington by any special legislative enactment for that purpose. The land and the dam being erected thereon are not now and will not in the future be such as would necessarily require absolute and exclusive jurisdiction in the federal government. The project is primarily in the aid of reclamation and the aid to navigation is merely incidental thereto. The federal government holds this land simply in the capacity of an ordinary proprietor. In building the Grand Coulee dam and promoting the Columbia Basin Project the federal government is not primarily performing a governmental, or, strictly speaking, even a public function. It is merely promoting its proprietary interests. Such advantage as may arise to the people at large from the building of this project is material and not governmental and is only such as might indirectly accrue to the public from the reclamation of an equal amount of land through private enterprise. It never has attempted nor it is now attempting to exercise exclusive jurisdiction over this area. It recognizes the jurisdiction of the State of Washington and there has never been any conflict between the two sovereignties nor any interference by either with the activities of the other.

It is therefore submitted that the judgment should be affirmed.

Respectfully submitted,
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